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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,572	12/28/2001	Senaka Balasuriya	33692.01.0024	1544

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VEDDER PRICE KAUFMAN & KAMMHOLZ
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EXAMINER

LAZARO, DAVID R

ART UNIT PAPER NUMBER

2155

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/034,572

Applicant(s)

BALASURIYA, SENAKA

Examiner

David Lazaro

Art Unit

2155

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

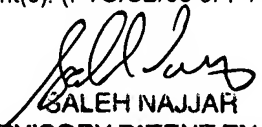
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8, 10-13, 15-18 and 20.
Claim(s) withdrawn from consideration: _____.


AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


SALEH NAJJAR
SUPERVISORY PATENT EXAMINER


David Lazaro
March 6, 2006

Continuation Sheet

11. Continued. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

Applicant argues on pages 8-9 of the remarks - *"The office action alleges that Miyazawa teaches "selection of settings for the apparatus [is] based on the comparison of the ambient threshold data and the detected ambient condition level". The "settings" that are selected in the cited portion of Miyazawa appear to be merely an ambient noise threshold setting. There is no teaching of any input or output setting, let alone multimodal input or multimodal output setting as required by the claim."*

Examiner's response - Miyazawa clearly discloses that an output setting is selected on the basis of a detected ambient condition level. Col. 13 lines 6-11 states, *"In other words, by having CPU 10 judge the current threshold being used and by presetting a response level that corresponds to that threshold, the response can be output at a level that matches the noise level existing at the time the threshold is updated"*. Col. 13, lines 17-22, states *"By setting the response level according to the noise level present in the environment in this way, the device responds at a higher sound level if the noise level is somewhat high, making the response content easier to hear even when some ambient noise is present in the environment."* Clearly, Miyazawa does not merely select an ambient noise threshold setting, but selects an appropriate output level. The examiner would consider the selection of an appropriate output level to be analogous to "selecting a multimodal input and output setting". There is no indication as to why one would exclude the selection of an output level from a

selection of a “multimodal input and output setting”. The claimed subject matter does not explicitly identify any particular “multimodal input and output setting”.

Furthermore, one must look at the teachings of Rudder, Miyazawa and Finke as a whole. Again, “Test of obviousness is not whether features of secondary reference may be bodily incorporated into primary reference's structure, nor whether claimed invention is expressly suggested in any one or all of references; rather, test is what combined teachings of references would have suggested to those of ordinary skill in art.” (In re Keller, Terry, and Davies, 208 USPQ 871 (CCPA 1981)). The rejections of claims 9, 14 and 19 under §103(a) do not attempt to state that Miyazawa expressly suggests the entire claimed invention. Instead, it is clear that Rudder specifically teaches the use of multimodal input and output settings (Page 32, 2nd and 3rd paragraphs) that are selected based on user preferences and awareness of the user's operating environment (Page 33, last paragraph; Page 34, starting at the 2nd paragraph to Page 35; and Page 38 2nd paragraph). The examiner asserts that the teachings of Miyazawa, as discussed above and in combination with the teachings of Rudder and Finke, would suggest the deficiencies of Rudder (as outlined in the rejection) such that the claimed subject matter related to the comparison of ambient condition levels and ambient condition threshold data and selecting a multimodal input and output setting based on the comparison, would have been obvious to one of ordinary skill in the art. Applicant's arguments are not persuasive.

Applicant argues on page 10 - *"In fact, it does not appear that the device in Finke is capable of operating in different input and output modalities."*

Examiner's response - As noted by applicant, adjustable characteristics of Finke include sound volume, ring tones, key tones, warning tones, lights, call transfers and combinations thereof. It is not clear how these cannot be considered as different input and output modalities. The adjustment (meaning different levels as well as on or off) of sound volume, ring tones, warning tones and lights are all clearly different types of output modalities. The examiner considers adjustment of key tones and the use of call transfers according to preferences/environment to be different types of input modalities. It is important to note that the claim language does not explicitly identify any particular "multimodal preference information". Applicant's arguments are not persuasive.

13. Continued:

The rejection of Claims 1, 11 and 15 under 35 U.S.C. §112, second paragraph, are withdrawn.

The rejection of Claims 1-8, 10-13, 15-18 and 20 under 35 U.S.C. §103(a) is maintained as presented in the 12/15/2005 office action.